CHARITABLE TRUSTS IN NEW YORK.—Whatever may have been the origin of charitable uses,[1] it became well settled in England at an early date that neither the rule against perpetuities[2] nor that requiring certainty of beneficiaries[3] should be permitted to deprive the public of the many charities containing those vices; and this conclusion, together with a liberal exercise of both the judicial[4] and prerogative *cy pres* power,[5] greatly simplified the English system. That even development, however, is in striking contrast with the checkered career of charitable trusts in this State, where the legislature and the courts seem to have aimed to complicate rather than to simplify the law.

The Revised Statutes of 1830[6] marked the first step toward uncertainty, and it was only after a judicial struggle of some fifty years that it became finally settled that charitable trusts, as inherited from England,[7] had been abolished with all others not specifically saved in the revisers' scheme.[8] This result, which at least had the virtue of certainty, was of short duration. The Laws of 1893[9] provided that no charities otherwise valid should fail for indefiniteness of beneficiaries, and entrusted their enforcement to the Supreme Court on motion of the attorney-general, but made no mention of other possible defects. While the terms of this act were plain, the judicial attitude toward charities had evidently changed, and a construction was readily adopted, broad enough to give the statute the effect of preventing the operation of the rule against perpetuities as well as that against indefiniteness.[10] The apparent effect of this judicial legislation was the reestablishment *in toto* of the adopted English rules in force before the Revised Statutes.[11] This result is far from objectionable, however, since an interpretation restricting the operation of the statute to the defect of indefiniteness, a de-

[1]See Fowler, Charitable Uses in New York, 2 COLUMBIA LAW REVIEW 10.

[2]1 Jarman, Wills, (6th Eng. ed.) 211.

[3]Pocock *v.* Att'y-Gen'l (1876) L. R. 3 Ch. D. 342; 1 Jarman, Wills, (6th Eng. ed.) 226.

[4]Moggridge *v.* Thackwell (1802) 7 Ves. *36; *In re* Pyne L. R. [1903] 1 Ch. 83.

[5]Att'y-Gen'l *v.* Fletcher (1835) 5 L. J. Ch. 75. The early abrogation of the *cy pres* doctrine, Fowler, Real Property, (3rd ed.) 545, doubtless tended towards certainty; but a restricted form of the prerogative *cy pres* was apparently introduced by the Laws of 1901, c. 291, amended in Laws of 1909, c. 144, the effect of which is still problematical.

[6]1 R. S. 727, § 45. Note also that the English statute of Charitable Uses, 43 Eliz. c. 4, had been repealed in New York. See McCartee *v.* Orphan Asylum (N. Y. 1827) 9 Cow. 437.

[7]See McCartee *v.* Orphan Asylum *supra;* Dutch Church *v.* Mott (N. Y. 1838) 7 Paige 77, 79; Shotwell's Ex'r *v.* Mott (N. Y. 1844) 2 Sandf. Ch. 50.

[8]Cottman *v.* Grace (1889) 112 N. Y. 299; Tilden *v.* Green (1891) 130 N. Y. 29; *cf.* Williams *v.* Williams (1853) 8 N. Y. 525; Beekman *v.* Bonsor (1861) 23 N. Y. 298; Levy *v.* Levy (1865) 33 N. Y. 97.

[9]C. 701.

[10]Allen *v.* Stevens (1899) 161 N. Y. 122; Matter of Griffin (1901) 167 N. Y. 71; Rothschild *v.* Goldenberg (N. Y. 1905) 103 App. Div., 235.

[11]1 COLUMBIA LAW REVIEW 400.

fect rarely responsible alone for the failure of a charity, would have rendered it practically nugatory.[12] Perhaps it was the realization of the completeness of the change thus made which led the court to retrace its steps in the case of *In Re Shattuck*,[13] which at once made the destiny of charities again a matter of speculation. In that case a residuary devise and bequest to "such religious, educational or eleemosynary institutions" as the trustee might in his discretion select, was held invalid, on the theory that, since there was nothing in the will restricting the gift to charities, and private as well as public institutions might therefore have been chosen, it was not within the power of the attorney-general to enforce it as a charitable trust. This result is manifestly at variance with the English rules, which, it had been decided, were restored by the Laws of 1893,[14] for in England a trust, if technically a charity, was not allowed to fail,[15] and it is patent that the general scheme of the will would have met the English requirements in this respect, since gifts for educational or religious purposes have always been sustained[16] in the face of objections that an interpretation of the will such as that adopted in the *Shattuck Case* might divert the estate into non-charitable channels.[17] Even assuming, however, that it was open to the court to place such a construction on the will, it is submitted that on principle there was no need for judicial intervention so long at least as it appeared that the trustee was willing to restrict the use of the gift to charitable purposes.[18]

A similar question was presented in the recent case of *In re Robinson's Will* (N. Y. 1911) 96 N. E. 925. The bequest there was "to provide shelter, necessaries of life, education, general or specific, and such other financial aid" as might seem fitting to the trustees, to such persons as they might select. This was held valid, and the *Shattuck Case* was distinguished on the ground that the ambiguity arising from the use of the word "institutions" was not here present. But it is difficult to discover any distinction of principle between the cases, for the bequest here is equally open to the construction adopted in the *Shattuck Case*, irrespective of the inclusion or exclusion of "institutions." The practical result of the decision in the principal case would therefore seem to be to restrict the application of the *Shattuck Case* to its facts, and again makes possible the enforcement in New York of the comparatively simple English doctrine, whereby charitable trusts are supported, regardless of the uncertainty of beneficiaries or trustees and of the rule against perpetuities. But the consequences of the requirement of certainty of purpose, by the latest decisions, seem to have been once more made problematical.

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[12]See Allen *v.* Stevens *supra.*

[13](1908) 193 N. Y. 446.

[14]Allen *v.* Stevens *supra.*

[15]See Morice *v.* Bishop (1805) 10 Ves. Jr. *522. This case has been severely criticised by Professor Ames, 5 Harv. L. Rev. 389. There is of course a material distinction between "benevolent" and "charitable," People *v.* Powers (1895) 147 N. Y. 104, 110, but by the terms of the statute, Laws of 1893, c. 701, this distinction has been done away with.

[16]1 Jarman, Wills, (6th Eng. ed.) 217; 2 Perry, Trusts, (6th ed.) § 700.

[17]*In re* White L. R. [1893] 2 Ch. 41.

[18]See 5 Harv. L. Rev. 389.